

Memorandum

425.0417

To : Ms. Barbara Lee
BH - District Principal Tax Auditor

Date: June 15, 1993

From : John L. Waid
Tax Counsel

Subject: **[No Permit Number]**
Sales of Human Semen from a Sperm Bank

I am answering your memorandum to me dated April 19, 1993. You indicated that your office has received two inquiries from C.P.A. D--- Z--- as to whether or not human semen sold by a sperm bank is subject to sales or use tax. Mr. Z---, in two letters to the District, indicates that the sperm bank sells the semen both to medical personnel for use with their clients and directly to women for self-insemination.

OPINION

As you know, in California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise noted, all statutory references are to the Revenue and Taxation Code.) Administratively, the Board has never attempted to classify a transfer of human tissue as a sale of property. This policy was made law in 1965 when the Legislature enacted Revenue and Taxation Code Section 33, which reads as follows:

Human whole blood, plasma, blood products, and blood derivatives, or any human body parts held in a bank for medical purposes, shall be exempt from tax for any purpose."

We are of the opinion that the term "body parts" is general enough to cover human tissue which is processed for sale for medical purposes. (See, e.g., Annot. 515.1280.) Semen may be included within the broad category "human tissue." We have also previously concluded that substances taken internally for treatment for fertility or infertility are medicines. (See, e.g., Annot.425.0600.) Therefore, we conclude that human semen sold by a

sperm bank for the purpose of insemination introduced whether by a doctor or through self-insemination are sales for medical purposes and are therefore exempt from tax under the above authority.

When advising Mr. Z--- of this opinion, please remind him that, since he did not identify the taxpayer, your written response does not constitute specific written advice to the taxpayer under Revenue and Taxation Code Section 6596. Rather, it constitutes general comments regarding the applicability of California Sales and Use Tax Law to a set of hypothetical facts.

JLW:es

cc: Mr. Donald Fillman

M e m o r a n d u m**425.0417**

To: Susan Wengel
Assistant Chief Counsel

Date: August 20, 1996

From: Jim Mahler
Tax Counsel III

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Subject: Sales of Human Semen by Sperm Bank

Bob Nunes has asked for an opinion on a proposed annotation about sales of human semen by sperm banks. The proposed annotation concludes that such sales are nontaxable under Revenue and Taxation Code Section 33, which provides: "... any human body parts held in a bank for medical purposes shall be exempt from tax for any purpose."

Bob's concern, apparently, is that replenishing tissues (semen, hair, saliva, hormones, etc.) are not "parts" of the body, at least once they have been separated from the body. This interpretation of the statute is arguably supported by the general rule that tax exemptions are to be construed strictly against the taxpayer.

The courts have noted, however, that human body parts including replenishing tissues are *sui generis* and are not to be "abandon[ed] ... to the general law of personal property." Moore v. Regents of University of California, 51 Cal.3d 120, 137 [1990].) More to the point, Health and Safety Code §7150.1(g) defines "part" to mean "an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body"

Traditionally, therefore, we have broadly construed the term "human body parts" in §33 to include tissues, not just anatomical organs. (See Sales and Use Tax Annot. 515.1280 [8/30/71].) I see no reason to depart from our traditional view. Accordingly, I believe the proposed annotation should be approved.

JEM:jm